

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.7022 OF 2006

Mohanraj Rupchand Jain alias)
Chhajed, aged about 45 years,)
Occ: Business residing at 403,)
'C' Wing, Utashi Apartment,)
Rebello Road, Mount Mary Steos,)
Bandra (West), Mumbai - 400 050.).. Petitioner

Vs.

1. Kewalchand Hastimal Jain,)
age 51, Occ : Business,)
2. Shri Gautamchand Hastimal Jain)
age 43, Occ : Business,)
3. Manoharkumar Hastimal Jain,)
age 35, Occ: Business,)
all residing at Hasbhaw Niwas,)
8, Bazaar Street, Mylapore)
Chennai 600 004.)
4. Smt.Ashadevi Surendrakumar)
Mahar (Jain), age 39,)
Occ: Housewife, residing at)
No.44, Kilarai Road,)
B.V.K.Iyengar Road Cross,)
Bangalore 560053.)
5. Smt.Sujadevi Pravinkumar)
Sancheti (Jain), aged 37,)
Occ: Housewife, residing at)
B.M.Road, Sakleshpur,)
District 573134, Hassan,)
Karnataka State.)
6. Smt.Ratandevi Amarchand Jain,)
Age 65, Occ : Housewife,)
residing at 120, Bazar Road,)
Marlecha Mansion, 1st Floor,)
Bandra (West), Mumbai 400 050.)
7. Dharamchand Amarchand Jain,)
age 44, Occ: Business,)
residing at 129/C, Bazar Road,)

Flat No.104, 1st Floor,)
Bandra (West),)
Mumbai - 400 050.)

8. Rajendrakumar Amarchand Jain,)
age 27, Occ: Business,)
residing at 120, Bazar Road,)
Marlecha Mansion, 1st Floor,)
Bandra (West),)
Mumbai - 400 050.)

9. Subhashchandra Amarchand Jain,)
age 30, Occ : Service,)
residing at Flat No.303,)
Bharati Apartments,)
G.B.Indulkar Marg,)
Vile Parle (East),)
Mumbai 400 057 (through their)
constituted attorneys)
S/Shri Dharamchand A.Jain)
and Rajendrakumar A. Jain)
(Plaintiffs No.7 and 8)
respectively herein.)).. Respondents
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Shri R.D'mello for the petitioner.

S/Shri B.G.Tangsali and P.G.Kadam for the respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 20th October, 2006

ORAL JUDGMENT:

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner challenges the order dated 29th August, 2006 passed by the revisional bench of the Small Cause Court, Mumbai, in Revision Application No.23 of 2006 and the order dated 3rd December, 2005

passed by the Trial Judge in Interim Notice No.1576 of 2005 in R.A.E.Suit No.752 of 2004. The order of the Trial Judge relates to the rejection of the application filed by the petitioner objecting the admissibility of certain documents which were sought to be produced on record along with the affidavit in evidence filed under Order XVIII Rule 4 of the Code of Civil Procedure, 1908 and the order of the Revisional Court relates to the dismissal of the said revision against the said order of the Trial Judge.

3. The learned advocate appearing for the petitioner, placing reliance in the decision of the learned Single Judge in **Sayarabi Sayyad Abdul Ajij (Deceased), through L.Rs. v. Shri Abdul Rashid Abdul Majid**, reported in 2004(4) All MR 581, and **Pacific Engineering Co.Pvt.Ltd. v. East India Hotels Ltd.**, reported in 2004(4) All MR 330, has submitted that considering the provisions of Order VII Rule 14, it was necessary for the respondents to enter those documents in the list of documents annexed to the plaint and to produce copies thereof along with the plaint and in absence thereof, no document can be allowed to be produced without prior leave in that regard being obtained from the Trial Court. The documents in question having been produced for the

first time along with the affidavit under Order XVIII Rule 4 of the Code without obtaining prior leave in that regard and in the absence of those documents being listed in the list of documents filed along with the plaint, nor copies thereof have been produced along with the plaint, the learned Trial Judge erred in dismissing the application filed by the petitioner objecting the admissibility of the said documents. He further submitted that he had specifically raised the plea of non maintainability of the suit and on account of those documents being admitted, it will result in great prejudice to the petitioner. Since the order allowing the documents was prejudicial to the petitioner, the proper procedure for the petitioner to challenge the same was by way of revision, and therefore, the Revisional Court could not have dismissed the revision application holding the same to be not maintainable.

4. On the other hand, the learned advocate appearing for the respondents placing reliance in the decision of the Division Bench of this Court in **Sukhdev Prasad Raghbir v. Rambhujarat Kshampati**, reported in AIR 1983 Bombay 25 has submitted that the order of the learned Single Judge was purely a procedural one and did not affect any of the

substantive rights of the petitioner, and therefore, it was not revisable and hence no fault can be found with the impugned order dismissing the revision application.

5. Perusal of the order passed by the Trial Judge discloses that the petitioner had taken out the notice for rejecting the documents which were filed along with the affidavit under Order XVIII Rule 4 of the Code as also for rejection of the suit. The learned Judge, after hearing the parties and on consideration of the Order VII Rule 14 of the Code, held that though in terms of the Order VII Rule 14 of the Code it is necessary for the parties to produce documents on which the suit is based as also to submit a copy of the list of documents which are relied upon, the petitioner having failed to make out any case of prejudice on account of admission in evidence, the documents which are sought to be produced by the respondents along with the affidavit under Order XVIII Rule 4 of the Code, while reserving the right of the petitioner to lead necessary evidence in rebuttal, has rejected the said application filed by the petitioner. As far as the order of the Revisional Bench is concerned, it discloses that the revision application has been dismissed as not maintainable after taking

into consideration the decision in **Sukhdev Prasad Raghubir's case (supra)**.

6. It cannot be disputed that in terms of Order VII Rule 14 of the Code, where a plaintiff sues upon a document in his possession or power in support of his claim, he shall enter such document in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof to be filed with the plaint. Sub-rule (3) of Rule 14 thereof clearly provides that a document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. Sub-rule (4) thereof provides that nothing in the said rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory. Similar is the provision under the sub-clause (3) of Rule 1 of the Order XIII of the Code. Being so, it cannot be disputed that if the plaintiff fails to mention the documents in the list annexed to the plaint and to place on record a copy of such document,

which is required to be produced under the law at the time of filing of the plaint, the plaintiff is not entitled to produce any additional document thereafter, without the leave of the Court. The contention of the learned advocate for the petitioner, however, is that such leave has necessarily to be obtained prior to the documents being placed on record. The contention cannot be found fault with. But, at the same time, it is also to be noted that nothing prevents the Court in its discretion to grant leave subsequent to the documents being produced before the Court even though such documents were not entered in the list annexed to the plaint. It would depend upon the facts of each case. Undoubtedly, the order of the Court in that regard will have to be a speaking and reasoned order. In the case in hand, however, the said issue does not arise at all.

7. It is a matter of record that the suit in question has been filed for eviction of the petitioner from the suit premises. Various objections are sought to be raised by the petitioner regarding the rights claimed by the respondents to seek eviction of the petitioner from the suit premises. It is also true that the documents have been filed after filing of the written statement by the petitioner. Nevertheless,

the petitioner has right to cross-examine the deponent who has filed the affidavit along with the documents and also to lead further evidence including documentary evidence, as these rights are specifically reserved to the petitioner while granting leave to the respondents to produce the documents. It is also to be noted that the documents which are sought to be produced are all relating to the property in question. They are the property card, municipal assessment bills, notice dated 8th July, 1996, sketch of the suit premises, and copy of the L.C.Suit No.244 of 2004. Equally it is pertinent to note that neither before the Trial Court nor in the Revisional Court nor in the proceedings before this Court, the petitioner has been able to successfully contend that any of those documents are either irrelevant or immaterial for just and appropriate decision in the matter.

8. It cannot be forgotten that the provision comprised under Order VII Rule 14 of the Code relates to the procedure to be followed in the civil proceedings before the Court. The said provision is essentially to assist the parties as well as the Court in the matter of production of the documentary evidence of the plaintiff while adjudicating the dispute raised before the Court. Being so, it is

essentially to assist the parties and the Court to arrive at an appropriate decision on the matter in dispute. Being so, the provision in that regard is necessarily to be construed liberally, and no pedantic approach should be adopted while enforcing the said provision of law. The documentary evidence which is not disputed to be relevant and material for the just and appropriate decision in the matter, merely because the respondents had failed to enter the same in the list annexed to the plaint, could not be ignored, unless it is shown by the petitioner that there would be real prejudice caused to the petitioner on account of the respondents being allowed to produce such documents. A document which pertains to the matter in issue cannot be said to cause prejudice to either of the parties, merely because there is some delay in production of such document. It is to be noted that the deponent who has filed the affidavit on behalf of the respondents along with the documents is yet to be cross-examined and evidence in that regard by the petitioner is yet to be led in the matter. Being so, there would be ample opportunity to the petitioner to meet those documents in the course of recording of evidence including the cross-examination of the witness of the respondents.

9. The decisions sought to be relied upon on behalf of the petitioner are not applicable to the facts of the present case. As far as **Sayarabi Sayyad Abdul Ajij's case (supra)**, it was a case in relation to the grant of amendment and not in relation to allowing the parties to place on record the documents which are not entered in the list annexed to the plaint.

10. The decision in **Pacific Engineering Co.Pvt.Ltd.'s case (supra)**, and the paragraph 36 thereof to which an attention was drawn is in relation to the Order comprised under Order IX Rule 13 of the Code, and that was in a matter where revision application was filed challenging the order passed by the Small Causes Court rejecting the application for unconditional withdrawal of the suit. It had nothing to do with the matter relating to the production of documents in the absence of mention thereof in the list annexed to the plaint.

11. In **Sukhdev Prasad Raghubir's case (supra)**, the Division Bench had clearly held that the purely procedural orders which do not affect substantive rights of the parties are not revisable under Section 29(3) of the Bombay Rent Act. In the case in hand,

the order granting leave to produce documents, even though those documents were not entered in the list annexed to the plaint, while dismissing the objection thereto, cannot be said to be affecting the substantive rights of the parties. The respondents are justified in contending that no fault can be found with the order of Revisional Court dismissing the revision application against such order.

12. There is no case for interference in the impugned order passed by the Trial Judge, and for the reasons stated above, therefore, no interference is warranted in the order passed by the Revisional Court. The petition, therefore, fails and is hereby dismissed. Rule discharged with no order as to costs.

(R.M.S.KHANDEPARKAR, J)